

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/25

Date: 29 October 2026

TRIAL CHAMBER VII

Before: Judge Althea Violet Alexis-Windsor, Presiding
Judge Miatta Maria Samba
Judge Beti Hohler

SITUATION IN LIBYA

IN THE CASE OF THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI

PUBLIC

Defence consolidated reply to (1) Prosecution Response to “Defence request for authorisation for Lead Counsel to use Arabic at trial” (ICC-01/11-01/25-208) and (2) Registry observations pursuant to the Chamber’s email order of 9 October 2026, “Instructions Regarding Defence Request 203” (ICC-01/11-01/25-209)

Source: Defence for Mr Khaled Mohamed Ali El Hishri

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I. INTRODUCTION

1. Pursuant to the Single Judge's email order of 23 October 2026,¹ the Defence for Mr El Hishri ("Defence" and "Mr El Hishri", respectively) files this consolidated reply to the *Prosecution Response to "Defence request for authorisation for Lead Counsel to use Arabic at trial"*² and the *Registry observations pursuant to the Chamber's email order of 9 October 2026, "Instructions Regarding Defence Request 203"*.³

2. On the basis of the authorisation of its request for leave to reply, the Defence will reply on the five issues presaged in its request. They are: a) The Prosecution erroneously conflates Article 50(3) of the Rome Statute ("Statute") and Rule 41 of the Rules of Procedure and Evidence ("Rules"); b) The Duterte obiter dicta test is incompatible with Article 50(3); c) The word "discrete" is not synonymous with "limited"; d) The Registry resource concerns are unsubstantiated and unfounded; and e) There exists no reasonable basis to apprehend a floodgates situation.

3. The use of Arabic during Lead Counsel's oral pleadings and examination of witnesses is necessary for Mr El Hishri to be able to best understand and, therefore, most fully engage with his Counsel's arguments on his behalf. This is one of the most concrete ways to guarantee respect for his right to a fair trial.

II. PROCEDURAL HISTORY

4. On 15 January 2026, in the *Joint Prosecution and Defence submissions on the disclosure process and the agenda of the first status conference*, the Defence requested that PTC I grant "leave to address it orally in Arabic during status conferences and the confirmation of charges hearing."⁴

¹ Email from Trial Chamber VII, "[ICC-01/11-01/25 - Public] Order on Defence request for leave to reply 210", 23 October 2026 at 16:08.

² ICC-01/11-01/25-208, 19 October 2026 ("Prosecution Response").

³ ICC-01/11-01/25-209, 19 October 2026 ("Registry Observations").

⁴ ICC-01/11-01/25-53, 15 January 2026, para. 15.

5. The request was granted via email order on 19 January 2026.⁵

6. Between 19 and 21 May 2026, the Confirmation of Charges hearing was held, with Defence Lead Counsel Yasser Hassan pleading entirely in Arabic.

7. On 16 July 2026, the Decision on confirmation of the charges against Mr El Hishri was issued.⁶

8. On 27 July 2026, Trial Chamber VII ("Trial Chamber") issued its *Order Scheduling the First Status Conference*, in which it requested the Parties to make submissions on, *inter alia*, "languages to be used by the parties" at trial.⁷

9. On 19 August 2026, the Defence requested that the Trial Chamber grant "leave for Lead Counsel, Mr Hassan to address [the Trial Chamber] in Arabic during the first status conference".⁸

10. On 25 August 2026, the Parties filed their *Joint Prosecution and Defence submissions pursuant to the "Order scheduling the first status conference"*, in which it was submitted that:

Lead Counsel for the Defence has sought leave from the Chamber to use Arabic during the first status conference. The Prosecution does not oppose this request. Defence will submit a request for authorisation to use Arabic during the trial in due course.⁹

11. On the same day, the Trial Chamber informed the Defence via email order that it rejected the request for leave to plead in Arabic during the first status conference but stated that, "going forward, the Chamber considers that specific circumstances may exceptionally justify the use of a non-working language by counsel during discrete

⁵ ICC-01/11-01/25-122-Anx1.

⁶ ICC-01/11-01/25-143.

⁷ ICC-01/11-01/25-157, para. 1(d).

⁸ Email from Defence to Trial Chamber VII, "Request for leave to use Arabic during forthcoming status conference", 19 August 2026 at 16:15.

⁹ ICC-01/11-01/25-169, para. 18.

portions of trial.”¹⁰

12. On 31 August 2026, the Trial Chamber issued its *Order Setting the Agenda for the First Status Conference*, in which it ordered that “[a]ny request regarding the use of a language other than the working languages of the Court by parties and participants, shall be made via formal filing”.¹¹

13. On 8 October 2026, the Defence filed its *Defence request for authorisation for Lead Counsel to use Arabic at trial* (“Defence Request”).¹²

14. On 9 October 2026, the Single Judge instructed the Registry to provide observations on the Request by 19 October 2026.¹³

15. On 19 October 2026, the Prosecution filed the Prosecution Response and the Registry filed the Registry Observations.

16. On 22 October 2026, the Defence filed the *Defence consolidated request for leave to reply to (1) Prosecution Response to “Defence request for authorisation for Lead Counsel to use Arabic at trial” (ICC-01/11-01/25-208) and (2) “Registry observations pursuant to the Chamber’s email order of 9 October 2026, “Instructions Regarding Defence Request 203” (ICC-01/11-01/25-209).*¹⁴

17. On 23 October 2026, the Single Judge granted in full the Request for Leave to Reply via email order.¹⁵

¹⁰ Email order from Trial Chamber VII, “[ICC-01/11-01/25 - Public] Re: Request for leave to use Arabic during forthcoming status conference”, 25 August 2026 at 17:23 (“Order of 25 August 2026”).

¹¹ ICC-01/11-01/25-176, para. 3(d).

¹² ICC-01/11-01/25-203

¹³ Email order from Single Judge of Trial Chamber VII, “[ICC-01/11-01/25 Public] Instructions regarding Defence request 203”, 9 October 2026 at 15:55.

¹⁴ ICC-01/11-01/25-210 (“Request for Leave to Reply”).

¹⁵ Email from Trial Chamber VII, “[ICC-01/11-01/25 - Public] Order on Defence request for leave to reply 210”, 23 October 2026 at 16:08.

III. APPLICABLE LAW

18. Article 50(2) of the Rome Statute generally provides that “the working languages of the Court shall be English and French.” However, article 50(3) provides that:

At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

19. As distinct from the authorisation to use an official language as a working language under Rule 41 of the Rules, authorisation under Article 50(3) “evidently falls to the relevant Chamber, which has control over the proceedings and is best placed to assess the impact of any such authorization” and is not to be given by the Presidency.¹⁶

IV. SUBMISSIONS

A. The Prosecution erroneously conflates Article 50(3) and Rule 41

20. In paragraphs 8 to 11 of its Response, the Prosecution erroneously conflates the issue of a Party’s use of a non-working language in proceedings, to be authorised by a Chamber under Article 50(3) of the Statute, with the wholly different issue of the use of an official language of the Court as a working language to be authorised by the Presidency under Rule 41 of the Rules. The Prosecution do not argue that the Defence Request falls under Rule 41 and not Article 50(3). Instead, they claim that a request under Article 50(3) should still be assessed against the criteria applicable to Rule 41.

21. As is evident from both the wording of the two provisions and the Presidency’s *Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’* in *Al Hassan*, these two provisions refer to entirely different situations that are governed by entirely different criteria. A request under Article 50(3) such as the Defence Request asks only for the ability of “any party to a proceeding or a State allowed to

¹⁶ *Al Hassan*, Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-302, 4 April 2019, para. 18.

intervene in a proceeding” to use a language other than English or French.¹⁷ In contrast, the use of an official language as a working language under Rule 41 contemplates its use by all Parties and participants, including the relevant Chamber, in both oral and written proceedings.

22. That distinction is precisely why the use of an official language as a working language requires either that the “language is understood and spoken by the majority of those involved in a case before the Court”¹⁸ or that both the Prosecution and Defence request it, and why the partial use of a non-working language under Article 50(3) only requires that it be “adequately justified”.¹⁹ The clearly distinct requirements in these two provisions are not a mistake to be rectified by reading the requirements of Rule 41 into Article 50(3). They are intentional and indicate the distinct nature and purpose of the two provisions. In the words of the Presidency in *Al Hassan*, the Defence “Request is seeking the partial use of Arabic during oral proceedings, which is clearly distinct from the authorisation of Arabic as a working language in the proceedings.”²⁰ Criteria intended to apply to a completely different situation cannot and should not simply be imported to a request under Article 50(3). The requirements of Rule 41 are not relevant to the determination at which the Trial Chamber is asked to arrive, and should therefore be ignored when it assesses the only relevant test of whether the request is “adequately

¹⁷ Rome Statute, Article 50(3). Proposals made by States at the drafting stage of the Rome Statute included for a particular trial to be conducted concurrently in the language of the accused and of the witnesses, together with the working languages, without proposing to expand on the working languages of English and French, thus dealing with the two as distinct. Similarly, proposals from delegations from (chiefly) Latin America, whilst acknowledging the working and official language as distinct, called for the draft provision on languages (then Article 51, now Article 50) to authorise Parties or interveners, at the request of any one of them, to use a language other than English or French: United Nations, General Assembly, Report of the International Law Commission on the Work of its Forty-Sixth Session, 2 May-22 July 1994, 2 September 1994, A/49/10, p. 64; United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Proposals Relating to Official and Working Languages: Proposal Submitted by Andorra, Argentina, Bolivia, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Panama, Paraguay, Peru, Spain, Uruguay and Venezuela, 24 June 1998, A/CONF-183/C-1/L-16, p.1.

¹⁸ Rules of Procedure and Evidence, Rule 41.

¹⁹ Rome Statute, Article 50(3).

²⁰ *Al Hassan*, Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-302, 4 April 2019, para. 17.

justified.”²¹

B. The Duterte obiter dicta test is incompatible with Article 50(3)

23. The *obiter dicta* and *ex tempore* comment of the Presiding Judge of Trial Chamber III in the *Duterte* case variously cited by the Prosecution and/or the Registry as the “jurisprudence”²² and “practice”²³ of Trial Chamber III is neither jurisprudence nor practice and is incompatible with the established test in Article 50(3).²⁴

24. Although the Defence still does not have access to a public redacted version of the relevant transcript, it has been able to access the publicly available video recording of the *Duterte* proceedings in question.²⁵ It appears that the remarks referred to by the Prosecution and Registry were not made in response to a specific request or question raised by any of the Parties or participants in *Duterte* on the use of an official language other than English or French and, therefore, were purely *obiter dicta*. It is respectfully submitted that the persuasive judicial value of the Presiding Judge’s remarks is therefore extremely limited. Additionally, they appear to have been made extemporaneously without much if any of the deliberation that characterises Court jurisprudence and practice and that gives them their greater persuasive value.

25. Even if any persuasive value can be attached to the Presiding Judge’s *obiter dicta* and *ex tempore* comment, the standard apparently established in that statement is incompatible with the statutory standard set out in Article 50(3). Article 50(3) makes it clear that authorisation need only be “adequately justified”, and that once a Chamber reaches that conclusion, it “shall” authorise the use of the non-working language. Such a request need not be exceptional much less, in the words of the Presiding Judge, “a

²¹ Rome Statute, Article 50(3).

²² Registry Observations, para. 8.

²³ Prosecution Response, para. 3.

²⁴ *Duterte*, ICC-01/21-01/25-T-012-CONF-ENG ET, p. 40 lines 24-25 ; and, p. 41, lines 1-2.

²⁵ International Criminal Court, “Duterte Case: Fourth Status Conference, 13 October 2026, 2nd session”, https://www.youtube.com/watch?v=Ect0tFaPd_U&t=898s, at 14:58.

really exceptional circumstance". The applicable "adequately justified" test cannot be artificially heightened by *ex tempore obiter dicta* made by a judge in a different case.

C. The word "discrete" is not synonymous with "limited"

26. In its Order of 25 August 2026, Trial Chamber VII stated that the use of Arabic could be authorised if "specific circumstances [...] exceptionally justify the use of a non-working language by counsel during discrete portions of trial." The Defence has advanced submissions above on the applicable test, being one of adequate justification and not one of exceptional justification. But in addition, in its Response, the Prosecution argues that the Defence Request is not "discrete" because it "would apply to large portions of the Trial".²⁶ The Registry makes a similar argument in their Observations by stating that the Defence Request "may amount to a significant portion of the Defence's oral advocacy rather than discrete portions of the proceedings."²⁷

27. Both the Prosecution and Registry appear to interpret the word "discrete" as a synonym of "limited" or "narrow" or "lesser part". No widely-used dictionaries contain that definition. The Merriam Webster Dictionary defines discrete as "constituting a separate entity or item" or "individually distinct".²⁸ The Oxford English Dictionary defines it as: "Separate; detached from others; individually distinct. Opposed to *continuous*."²⁹ None of these definitions require that the discrete part be the lesser or more limited part, only that the discrete part be distinct and separate from the whole.

28. The Defence has requested authorisation for Lead Counsel (but not Co-Counsel) to use Arabic in his oral pleadings and in his examination of Arabic-speaking witnesses.

²⁶ Prosecution Response, para. 4.

²⁷ Registry Observations, para. 9.

²⁸ "Discrete", *Merriam Webster Dictionary*, <https://www.merriam-webster.com/dictionary/discrete> [last accessed 28 October 2026].

²⁹ "Discrete", *Oxford English Dictionary*, https://www.oed.com/dictionary/discrete_adj?tl=true [last accessed 28 October 2026]. Additionally, the Cambridge Dictionary defines it as "clearly separate or different in shape or form" or "having an independent existence or form apart from other similar things; separate" ("Discrete", *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/discrete> [last accessed 28 October 2026]).

Both Lead Counsel's oral pleadings and examination of Arabic-speaking witnesses will be discrete, separate, and distinct portions of the trial. Lead Counsel's oral pleadings have a clear beginning and ending that prevent them from simply being a continuous part of the proceedings. They begin when he begins speaking and end when he stops speaking. Witness examinations similarly have clear beginnings and ends that distinguish them from the rest of the proceedings. Whether or not the combination of these discrete portions of the proceedings might amount to the majority of the trial proceedings is irrelevant to the question of whether they are discrete portions.

D. The Registry resource concerns are unsubstantiated and unfounded

29. In its Observations, the Registry states, without providing detail, that "the implementation of the [Defence] Request would require all available in-house Arabic-language professionals to be allocated exclusively to live interpretation during the hearings."³⁰ It is unclear from this statement why the use of Arabic by Lead Counsel would occasion an increase in the need for Arabic-language professionals at trial. Arabic-speaking interpreters will be required to be present and working for the entirety of the hearings in the instant case, regardless of whether Lead Counsel pleads or examines in Arabic. They will be needed to interpret all statements made in English or French into Arabic for the Accused and Arabic-speaking witnesses, and to interpret into English and French all answers of Arabic-speaking witnesses.

30. Additionally, the Registry do not assert that Lead Counsel pleading in Arabic either in the confirmation proceedings in the instant case or in the *Al Mahdi* case resulted in an increase in resource demand. The only logical interpretation of that omission is that those pleadings did not occasion such a need for increased resources. Otherwise, the Registry would have included discussion of these concerns to support its assertion. The Registry have not indicated why this Request would be different from these two

³⁰ Registry Observations, para. 10.

previous examples of the use of existing resources to accommodate the same request.

31. The Registry is tasked with the important duty of ensuring the accessibility of the trial to the Accused and the affected communities through providing interpretation into Arabic and, understandably, takes both that duty and its other important tasks seriously. However, the bare assertion with no factual or logical support that Lead Counsel pleading in Arabic would occasion an increase in resources for its court interpretation that would prevent it from fulfilling its other duties is insufficient. Any decision to deny the Accused and the affected communities the unparalleled benefit of Lead Counsel pleading in Arabic must be based on fact and not unsubstantiated assertion.

E. There exists no reasonable basis to apprehend a floodgates situation

32. There is no reasonable basis to apprehend the Registry's novel argument that allowing the use of Arabic in the discrete and case-specific circumstances of the Defence Request would open the floodgates to requests for, or the expectation of, the use of non-working languages in other cases. The Defence Request is based on the following case-specific factors: 1) an Accused who speaks an official language of the Court and has no knowledge of either French or English; 2) a Lead Counsel who speaks the same official language natively; 3) an affected community whose primary, and often only, language is that same official language; 4) the majority of witnesses also speaking solely that same official language and experiencing vulnerability; and 5) the preexisting presence of the necessary interpreters in the courtroom for the benefit of the Accused.

33. These factors will not exist in every future case and demonstrate that this case is precisely what is contemplated in Article 50(3). Article 50(3) exists for a reason and its use does not open the floodgates to future requests or expectations of future use. The provision itself creates a legitimate expectation that it be used in specific situations where it is adequately justified, such as the instant case. Using it does not open the floodgates to any greater extent than that occasioned by the simple existence of the

provision. If it was not intended to be used, it would not have been included in the Statute.

V. CONCLUSION

34. The Defence Request places the ICC in an historic position in relation to the many peoples of the world who do not speak English or French. Authorising the use of Arabic in this case will allow the Chamber to demonstrate that the ICC will erect no barriers preventing it from speaking to the whole world.

35. For the foregoing reasons, the Defence requests that the Chamber authorise Lead Counsel's use of Arabic in oral pleadings and the examination of Arabic-speaking witnesses during trial.

Respectfully submitted,



Yasser Hassan

Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 29 October 2026

at The Hague, The Netherlands